

1
2
3
4
5
6
7
8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Federal Trade Commission,

12 Plaintiff,

13 vs.

14 ELH Consulting, LLC, *et al.*,

15 Defendants.
16
17
18

12-cv-2246-PHX-FJM

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND EQUITABLE
RELIEF AS TO DEFENDANTS
KEY TECH SOFTWARE
SOLUTIONS, LLC, also d/b/a KEY
ONE SOLUTIONS, and JUSTIN
JOURNAY**

19 Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed its
20 Complaint for a Permanent Injunction and Other Equitable Relief pursuant to
21 Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15
22 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and
23 Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to
24 obtain temporary, preliminary, and permanent injunctive relief, rescission or
25 reformation of contracts, restitution, disgorgement of ill-gotten gains, and other
26 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of
27 the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Trade Regulation
28 Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

1 Plaintiff and Defendants Key Tech Software Solutions, LLC, also d/b/a Key
2 One Solutions, and Justin Journey (“Stipulating Defendants”), have agreed to
3 entry of this Stipulated Final Judgment and Order for Permanent Injunction
4 (“Order”) by this Court in order to resolve all claims against Stipulating
5 Defendants in this action. Plaintiff and Stipulating Defendants have consented
6 to entry of this Order without trial or adjudication of any issue of law or fact
7 herein. The Receiver did not file an objection, and the time for doing so has
8 expired.

9 **NOW THEREFORE**, Plaintiff and Stipulating Defendants, having
10 requested the Court to enter this Order, and the Court having considered the
11 Order reached between the parties, **IT IS HEREBY ORDERED**,
12 **ADJUDGED, AND DECREED** as follows:

13 **FINDINGS**

14 1. This is an action by the Commission instituted under Sections
15 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing
16 Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to
17 these Sections of the FTC Act and the Telemarketing Act, the Commission has
18 the authority to seek the relief contained herein.

19 2. The Commission’s Complaint states a claim upon which relief
20 may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C.
21 §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C.
22 § 6105(b).

23 3. This Court has jurisdiction over the subject matter of this case
24 and personal jurisdiction over the Stipulating Defendants.

25 4. Venue, process, and service of process are proper.

26 5. The activities of Stipulating Defendants, as alleged in the
27 Complaint, are “in or affecting commerce” as “commerce” is defined in
28 Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Stipulating Defendants neither admit nor deny any of the

1 allegations set forth in the Commission's Complaint, except as specifically
 2 stated in this Order. Only for purposes of this action, Stipulating Defendants
 3 admit the facts necessary to establish jurisdiction.

4 7. Stipulating Defendants waive: (a) all rights to seek judicial
 5 review or otherwise challenge or contest the validity of this Order; (b) any
 6 claim that any of them may have against the Commission, its employees,
 7 representatives, or agents; (c) all claims under the Equal Access to Justice Act,
 8 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64
 9 (1996); and (d) any rights to attorney's fees that may arise under said provision
 10 of law. The Commission and Stipulating Defendants shall each bear their own
 11 costs and attorney's fees incurred in this action.

12 8. This Order is in addition to, and not in lieu of, any other civil or
 13 criminal remedies that may be provided by law.

14 9. Entry of this Order is in the public interest.

15 **DEFINITIONS**

16 For purposes of this Order, the following definitions shall apply:

17 1. **"Asset" or "Assets"** means any legal or equitable interest in,
 18 right to, or claim to, any real or personal property, including, but not limited to,
 19 "goods," "instruments," "equipment," "fixtures," "general intangibles,"
 20 "inventory," "checks," or "notes," (as these terms are defined in the Uniform
 21 Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other
 22 deliveries, shares of stock, lists of consumer names, accounts, credits, premises,
 23 receivables, funds, and all cash, wherever located.

24 2. **"Assisting Others"** includes, but is not limited to:

25 a. performing customer service functions, including, but not
 26 limited to, receiving or responding to consumer complaints;

27 b. formulating or providing, or arranging for the formulation
 28 or provision of, any advertising or marketing material, including, but not
 limited to, any telephone sales script, direct mail solicitation, or the

1 design, text, or use of images of any Internet website, email, or other
2 electronic communication;

3 c. formulating or providing, or arranging for the formulation
4 or provision of, any marketing support material or service, including but
5 not limited to, web or Internet Protocol addresses or domain name
6 registration for any Internet websites, affiliate marketing services, or
7 media placement services;

8 d. providing names of, or assisting in the generation of,
9 potential customers;

10 e. performing marketing, billing, or payment services of any
11 kind; and

12 f. acting or serving as an owner, officer, director, manager,
13 or principal of any entity.

14 3. **“Corporate Defendant”** means Key Tech Software Solutions,
15 LLC, also d/b/a Key One Solutions, and its successors and assigns, as well as
16 any subsidiaries, and any fictitious business entities or business names created
17 or used by these entities, or any of them.

18 4. **“Defendants”** means the Individual Defendant and the Corporate
19 Defendant, individually, collectively, or in any combination.

20 5. **“Document”** or **“Documents”** means any materials listed in
21 Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs,
22 charts, photographs, audio and video recordings, computer records, and other
23 data compilations from which information can be obtained and translated, if
24 necessary, into reasonably usable form through detection devices. A draft or
25 nonidentical copy is a separate Document within the meaning of the term.

26 6. **“Financial Institution”** means any bank, savings and loan
27 institution, credit union, or any financial depository of any kind, including, but
28 not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title
company, commodity trading company, or precious metal dealer.

1 procure services and any other person or entity;

2 2. The nature, terms, conditions, and disclosures associated
3 with the advertising, marketing, promoting, offering for sale, or
4 sale of any product or service offered by Stipulating Defendants;
5 and

6 3. Third party approvals or endorsements, or the
7 substantiation for or the legality of advertising claims for any
8 product or service offered for sale by Stipulating Defendants;

9 B. Failing to disclose to any payment processor or financial
10 institution the following information: (1) the identity of the owner, manager,
11 director, or officer of the applicant for or holder of a merchant account, and (2)
12 any material connection between the owner, manager, director, or officer of the
13 applicant or holder of a merchant account and any person or entity who has
14 been or is placed in a merchant account monitoring program, has had a
15 merchant account terminated by a payment processor or a financial institution,
16 or has been fined or otherwise disciplined in connection with a merchant
17 account by a payment processor or a financial institution; and

18 C. Engaging in any practice that would have the effect of
19 circumventing any chargeback monitoring program or other risk management
20 program implemented by a credit card payment association.

21 II.

22 MONETARY JUDGMENT

23 **IT IS FURTHER ORDERED** that:

24 A. Judgment is hereby entered in favor of the Commission and
25 against Stipulating Defendants, jointly and severally, for equitable monetary
26 relief in the amount of \$47,440.00; *provided, however*, that the Judgment for
27 equitable monetary relief shall be suspended subject to the conditions set forth
28 in Section II of this Order;

B. Stipulating Defendants relinquish all right, title, and interest in:

1 the funds held in the reserve account maintained in connection with the
2 merchant agreement between Stipulating Defendants and Global Payments,
3 Inc., and/or Century Bankcard Services, LLC, in favor of the Receiver;

4 C. All funds paid pursuant to this Order shall be deposited into a
5 fund administered by the Commission or its agent to be used for equitable
6 relief, including, but not limited to, consumer redress, and any attendant
7 expenses for the administration of such equitable relief. Stipulating Defendants
8 shall cooperate fully to assist the Commission in identifying consumers who
9 may be entitled to redress pursuant to this Order. If the Commission
10 determines, in its sole discretion, that direct redress to consumers is wholly or
11 partially impracticable or funds remain after redress is completed, the
12 Commission may apply any remaining funds for such other equitable relief
13 (including consumer information remedies) as it determines to be reasonably
14 related to Defendants' practices alleged in the Complaint. Any funds not used
15 for such equitable relief shall be deposited to the United States Treasury as
16 disgorgement. Stipulating Defendants shall have no right to challenge the
17 Commission's choice of remedies under this Section. Stipulating Defendants
18 shall have no right to contest the manner of distribution chosen by the
19 Commission. This judgment for equitable monetary relief is solely remedial in
20 nature and is not a fine, penalty, punitive assessment or forfeiture;

21 D. Stipulating Defendants relinquish all dominion, control, and title
22 to the funds paid to the fullest extent permitted by law. Stipulating Defendants
23 shall make no claim to or demand for return of the funds, directly or indirectly,
24 through counsel or otherwise;

25 E. In accordance with 31 U.S.C. § 7701, as amended, Stipulating
26 Defendants are hereby required, unless they already have done so, to furnish to
27 the Commission their taxpayer identifying numbers (social security number or
28 employer identification number), which shall be used for purposes of collecting
and reporting on any delinquent amount arising out of Stipulating Defendants'

1 relationship with the government; and

2 F. Stipulating Defendants agree that the facts as alleged in the
3 Complaint filed in this action shall be taken as true without further proof in any
4 bankruptcy case or subsequent civil litigation pursued by the Commission to
5 enforce its rights to any payment or money judgment pursuant to this Order,
6 including, but not limited to, a nondischargeability complaint in any
7 bankruptcy case. Stipulating Defendants further stipulate and agree that the
8 facts alleged in the Complaint establish all elements necessary to sustain an
9 action by the Commission pursuant to Section 532(a)(2)(A) of the Bankruptcy
10 Code, 11 U.S.C. § 532(a)(2)(A), and that this Order shall have collateral
11 estoppel effect for such purposes.

12 **III.**

13 **RIGHT TO REOPEN**

14 **IT IS FURTHER ORDERED** that:

15 A. Plaintiff's agreement to, and the Court's approval of, this Order,
16 including, but not limited to, the suspension of the monetary judgment against
17 Stipulating Defendants, is expressly premised upon the truthfulness, accuracy,
18 and completeness of Stipulating Defendants' representations regarding their
19 financial conditions, as set forth in the Individual and Corporate Financial
20 disclosure forms ("Financial Statements") with attachments provided to the
21 FTC on November 1, 2012, which contain material information upon which
22 Plaintiff relied in negotiating and agreeing to the terms of this Order;

23 B. If, upon motion of the Commission, the Court finds that
24 Stipulating Defendants failed to disclose any material asset, materially
25 misrepresented the value of any asset, or made any other material
26 misrepresentation in or omission from their Financial Statements or supporting
27 documents, the suspended Judgment entered in Section II shall become
28 immediately due and payable (less any amounts already paid). *Provided,*
however, that, in all other respects, this Order shall remain in full force and

1 effect, unless otherwise ordered by the Court; and

2 C. Any proceedings instituted under this Section shall be in addition
3 to, and not in lieu of, any other civil or criminal remedies that may be provided
4 by law, including, but not limited to, contempt proceedings, or any other
5 proceedings that the Commission or the United States might initiate to enforce
6 this Order. For purposes of this Section, Stipulating Defendants waive any
7 right to contest any of the allegations in the Commission's Complaint.

8 **IV.**

9 **PROHIBITIONS REGARDING CONSUMER INFORMATION**

10 **IT IS FURTHER ORDERED** that Stipulating Defendants, and their
11 officers, agents, servants, employees, attorneys, and all other persons in active
12 concert or participation with any of them who receive actual notice of this
13 Order by personal service or otherwise, are permanently restrained and
14 enjoined from:

15 A. Failing to provide sufficient customer information to enable the
16 Commission to efficiently administer consumer redress. Stipulating
17 Defendants represent that they have provided this redress information to the
18 Commission. If a representative of the Commission requests in writing any
19 information related to redress, Stipulating Defendants must provide it, in the
20 form prescribed by the Commission, within fourteen (14) days;

21 B. Disclosing, using, or benefitting from customer information,
22 including the name, address, telephone number, email address, social security
23 number, other identifying information, or any data that enables access to a
24 customer's account (including a credit card, bank account, or other financial
25 account), of any person which any Stipulating Defendant obtained prior to
26 entry of this Order in connection with the marketing or sale of any Debt Relief
27 Product or Service; and

28 C. Failing to dispose of such customer information in all forms in
their possession, custody, or control within thirty (30) days after entry of this

1 Order. Disposal shall be by means that protect against unauthorized access to
2 the customer information, such as by burning, pulverizing, or shredding any
3 papers, and by erasing or destroying any electronic media, to ensure that the
4 customer information cannot practicably be read or reconstructed.

5 *Provided, however,* that customer information need not be disposed of,
6 and may be disclosed, to the extent requested by a government agency or
7 required by a law, regulation, or court order.

8 **V.**

9 **ORDER ACKNOWLEDGMENTS**

10 **IT IS FURTHER ORDERED** that Stipulating Defendants obtain
11 acknowledgments of receipt of this Order:

12 A. Each Stipulating Defendant, within 7 days of entry of this Order,
13 must submit to the Commission an acknowledgment of receipt of this Order
14 sworn under penalty of perjury.

15 B. For 5 years after entry of this Order, Stipulating Defendant Justin
16 Jounay for any business that he, individually or collectively with any other
17 Defendant, is the majority owner or directly or indirectly controls, and each
18 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
19 officers, directors, and managers; (2) all employees, agents, and representatives
20 who participate in conduct related to the subject matter of the Order; and (3)
21 any business entity resulting from any change in structure as set forth in the
22 Section titled Compliance Reporting. Delivery must occur within 7 days of
23 entry of this Order for current personnel. To all others, delivery must occur
24 before they assume their responsibilities.

25 C. From each individual or entity to which a Stipulating Defendant
26 delivered a copy of this Order, that Stipulating Defendant must obtain, within
27 30 days, a signed and dated acknowledgment of receipt of this Order.

28

1 **VI.**

2 **COMPLIANCE REPORTING**

3 **IT IS FURTHER ORDERED** that Stipulating Defendants make timely
4 submissions to the Commission:

5 A. One year after entry of this Order, each Stipulating Defendant
6 must submit a compliance report, sworn under penalty of perjury.

7 1. Each Stipulating Defendant must: (a) designate at least
8 one telephone number and an email, physical, and postal address as
9 points of contact, which representatives of the Commission may use to
10 communicate with Stipulating Defendant; (b) identify all of that
11 Stipulating Defendant's businesses by all of their names, telephone
12 numbers, and physical, postal, email, and Internet addresses; (c)
13 describe the activities of each business, including the products and
14 services offered, the means of advertising, marketing, and sales, and the
15 involvement of any other Defendant (which Stipulating Defendant Justin
16 Jounay must describe if he knows or should know due to his own
17 involvement); (d) describe in detail whether and how that Stipulating
18 Defendant is in compliance with each Section of this Order; and (e)
19 provide a copy of each Order Acknowledgment obtained pursuant to this
20 Order, unless previously submitted to the Commission;

21 2. Additionally, Stipulating Defendant Justin Jounay must:
22 (a) identify all telephone numbers and all email, Internet, physical, and
23 postal addresses, including all residences; (b) identify all titles and roles
24 in all business activities, including any business for which he performs
25 services whether as an employee or otherwise and any entity in which he
26 has any ownership interest; and (c) describe in detail his involvement in
27 each such business, including title, role, responsibilities, participation,
28 authority, control, and any ownership.

B. For 20 years following entry of this Order, each Stipulating

1 Defendant must submit a compliance notice, sworn under penalty of perjury,
2 within 14 days of any change in the following:

3 1. Each Stipulating Defendant must report any change in: (a)
4 any designated point of contact; or (b) the structure of any Corporate
5 Defendant or any entity that Stipulating Defendant has any ownership
6 interest in or directly or indirectly controls that may affect compliance
7 obligations arising under this Order, including: creation, merger, sale, or
8 dissolution of the entity or any subsidiary, parent, or affiliate that
9 engages in any acts or practices subject to this Order.

10 2. Additionally, Stipulating Defendant Justin Journey must
11 report any change in: (a) name, including aliases or fictitious name, or
12 residence address; or (b) title or role in any business activity, including
13 any business for which he performs services whether as an employee or
14 otherwise and any entity in which he has any ownership interest, and
15 identify its name, physical address, and Internet address, if any.

16 C. Each Stipulating Defendant must submit to the Commission
17 notice of the filing of any bankruptcy petition, insolvency proceeding, or any
18 similar proceeding by or against such Stipulating Defendant within 14 days of
19 its filing.

20 D. Any submission to the Commission required by this Order to be
21 sworn under penalty of perjury must be true and accurate and comply with 28
22 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury
23 under the laws of the United States of America that the foregoing is true and
24 correct. Executed on:_____" and supplying the date, signatory's full name,
25 title (if applicable), and signature.

26 E. Unless otherwise directed by a Commission representative in
27 writing, all submissions to the Commission pursuant to this Order must be
28 emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal
Service) to: Associate Director for Enforcement, Bureau of Consumer

1 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,
2 Washington, DC 20580. The subject line must begin: FTC v. ELH
3 Consulting, LLC, et al. (FTC Matter No. X130004).

4 **VII.**

5 **RECORDKEEPING**

6 **IT IS FURTHER ORDERED** that Stipulating Defendants must create
7 certain records for 20 years after entry of the Order, and retain each such record
8 for 5 years. Specifically, Corporate Defendant and Stipulating Defendant
9 Justin Journey for any business in which he, individually or collectively with
10 any other Defendant, is a majority owner or directly or indirectly controls, must
11 maintain the following records:

12 A. Accounting records showing the revenues from all goods or
13 services sold, all costs incurred in generating those revenues, and the resulting
14 net profit or loss;

15 B. Personnel records showing, for each person providing services,
16 whether as an employee or otherwise, that person's: name, addresses, and
17 telephone numbers; job title or position; dates of service; and, if applicable, the
18 reason for termination;

19 C. Complaints and refund requests, whether received directly or
20 indirectly, such as through a third party, and any response;

21 D. All records necessary to demonstrate full compliance with each
22 provision of this Order, including all submissions to the Commission; and

23 E. A copy of each advertisement or other marketing material.

24 **VIII.**

25 **COMPLIANCE MONITORING**

26 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
27 Stipulating Defendants' compliance with this Order, including the financial
28 representations upon which part of the judgment was suspended and any failure
to transfer any assets as required by this Order:

1 interviews, conferences, pretrial discovery, review of documents, and for such
2 other matters as may be reasonably requested by the FTC. If requested in
3 writing by the FTC, Stipulating Defendants shall appear, or cause their officers,
4 employees, representatives, or agents to appear, and provide truthful testimony
5 in any trial, deposition, or other proceeding related to or associated with the
6 transactions or the occurrences that are the subject of the Complaint, without
7 the service of a subpoena.

8 **X.**

9 **DISSOLUTION OF ASSET FREEZE**

10 **IT IS FURTHER ORDERED** that the freeze on the assets of
11 Stipulating Defendants pursuant to the Stipulated Preliminary Injunction
12 entered in this action shall be lifted permanently. A financial institution shall
13 be entitled to rely upon a letter from Plaintiff stating that the freeze on
14 Stipulating Defendants' assets has been lifted.

15 **XI.**

16 **SEVERABILITY**

17 **IT IS FURTHER ORDERED** that the provisions of this Order are
18 separate and severable from one another. If any provision is stayed or
19 determined to be invalid, the remaining provisions shall remain in full force
20 and effect.

21
22
23
24
25
26
27
28

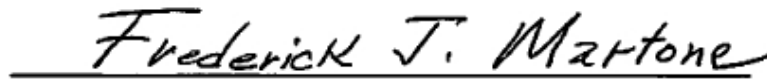
XII.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

DATED this 11th day of June, 2013.



Frederick J. Martone
Senior United States District Judge